

Message Text

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ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
AID-05 CEA-01 CIAE-00 COME-00 EB-08 FRB-03 INR-10
NSAE-00 USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 SS-15 L-03 JUSE-00 FTC-01
HEW-04 CEQ-01 SEC-01 NSC-05 /141 W
-----008744 280250Z /63

R 280025Z MAR 78
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 0304

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E.O. 11652: N/A
TAGS: EGEN, ECOSOC, EINV
SUBJECT: UN WORKING GROUP ON CODE OF CONDUCT ON TRANS-
- NATIONAL CORPORATIONS: SECRETARIAT DISTRIBUTES
- TEXT

REF: (A) USUN 1043, (B) USUN 1100

1. SUMMARY: NEW TEXT PREPARED BY CENTRE ON TRANSNATIONAL CORPORATIONS WHICH WOULD SERVE AS THE BASIS FOR FURTHER DISCUSSIONS BY WORKING GROUP ON A CODE OF CONDUCT FOR TRANSNATIONAL CORPORATIONS (TNCS) WAS DISTRIBUTED TO DELEGATIONS AT NOON ON SATURDAY, MARCH 26. UNANIMOUS VIEW OF US DELEGATION IS THAT IT REPRESENTS A SUBSTANTIAL IMPROVEMENT OVER PREVIOUS ANNOTATED TEXT OF CHAIRMAN OF GROUP (NIKlasson, Sweden). AS SUCH, AND IN SPITE OF SERIOUS DEFICIENCIES (SOME OF WHICH MENTIONED IN FOLLOWING PARAS), WE PLAN TO AGREE TO ITS USE AS BASIS FOR DISCUSSIONS IN FORTHCOMING WEEK. FORTY-ONE PAGE TEXT CONTAINS BOTH NEW ANNOTATIONS, ADDITIONAL POINTS MADE BY DELEGATIONS AND DISCUSSION SECTIONS UNDER EACH HEADING. TEXT WAS TRANSMITTED TO DEPT BY DATAFAX ON DAY RECEIVED. FUTURE
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COURSE OF WORKING GROUP DISCUSSIONS UNCERTAIN FOLLOWING CURRENT SESSION, BUT AT THIS STAGE WILL PROBABLY RESULT EITHER IN FURTHER DISCUSSION IN AUTUMN SESSION OF THIS NEW TEXT, OR ALTERNATIVELY, ATTEMPT BY CHAIRMAN TO DRAFT A NEW AND SHORTER VERSION DURING SUMMER, BASED ON THIS WEEK'S DISCUSSIONS. END SUMMARY.

2. DELEGATION CONSIDERS NEW TEXT TO REPRESENT SUBSTANTIAL IMPROVEMENT OVER PREVIOUS ANNOTATED OUTLINE FOR SEVERAL REASONS. FIRST, SECTION ON RESPONSIBILITIES OF GOVTS (SECTION IV) HAS BEEN CONSIDERABLY EXPANDED AND DEEPENED IN DETAIL; FURTHERMORE, THIS SECTION IS NOW DRAFTED IN NORMATIVE LANGUAGE, RATHER THAN NEUTRALLY-PHRASED (ALTHOUGH LANGUAGE DOES NOT STATE "GOVTS SHOULD" BUT RATHER "TNCS SHOULD BE ... BY GOVTS"). SECONDLY, LANGUAGE IN SECTION ON RESPONSIBILITIES OF TNCS IS ANCHORED MORE CLEARLY ON NATIONAL LAWS AND REGULATIONS, AND SECTION IV ALSO CONTAINS PROVISIONS ON NEED FOR CLARITY AND STABILITY OF SUCH LAWS AND REGULATIONS. PREAMBULAR SECTION, WHILE NOT ENTIRELY SATISFACTORY, REPRESENTS AN ATTEMPT AT NEUTRAL FORMULATIONS. FINALLY, THERE IS REFERENCE IN SECTION IV TO QUALIFIED VERSION OF NATIONAL TREATMENT (WITH STANDARD EXCEPTIONS) AS GOAL TO BE SOUGHT FOR ESTABLISHED INVESTMENT ALONG CIEC LINES.

3. TEXT STILL PRESENTS SUBSTANTIAL AND IN SOME CASES FUNDAMENTAL DIFFICULTIES, HOWEVER. FOR INSTANCE, REFERENCES TO INTERNATIONAL LAW, OR INTERNATIONAL "NORMS" ARE LIMITED AND AMBIGUOUS. IT DESCRIBES COMPENSATION FOR NATIONALIZATION TO BE "JUST" RATHER THAN "PROMPT ADEQUATE AND EFFECTIVE." IT DOES NOT CONTAIN A CLEAR STATEMENT ON NEED TO RESPECT CONTRACTS. IT ALSO HAS UNACCEPTABLE LANGUAGE LIMITING CONTACTS BETWEEN GOVTS AND LIMITS LIMITED OFFICIAL USE

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REQUESTS BY TNCS TO HOME GOVT SUPPORT FOR "NORMAL" DIPLOMATIC ACTIVITIES. SECTION III ALSO HAS OVERLY-BINDING LANGUAGE ON LIMITATIONS ON MANY TNC ACTIVITIES.

4. STATUS OF TEXT IS THAT IT IS A "WORKING PAPER IN WHICH COMMON ELEMENTS THAT EMERGED DURING THE DISCUSSIONS WOULD BE IDENTIFIED AND FORMULATED IN A LANGUAGE THAT WOULD ASSIST THE GROUP IN ITS FURTHER DISCUSSION ON THE FORMULATION OF A CODE OF CONDUCT." IT "WOULD NOT BE CONSIDERED AS AGREED TEXTS AND THEREFORE WOULD NOT PREJUDICE THE POSITIONS OF GOVTS."

5. OECD COUNTRIES MET MARCH 27 PRIOR TO GENERAL WORKING GROUP MEETING IN AFTERNOON TO COMPARE IMPRESSIONS OF NEW DRAFT.

- ON PROCEDURES: SWEDISH DEL NOTED IT WAS HIS UNDERSTANDING THAT NIKLASSON WOULD PREFER WORKING GROUP TO DISCUSS NEW TEXT VERY CAREFULLY EVEN IF THIS SHOULD MEAN THAT EXAMINATION CANNOT BE CONCLUDED BY END OF THIS WEEK. MOST DELS EXPRESSED SATISFACTION WITH THIS PROCEDURE. IT WAS MADE CLEAR THAT WORKING GROUP SHOULD NOT START DRAFTING CODE LANGUAGE THIS WEEK BUT LIMIT ITSELF

TO EXAMINE EXTENT TO WHICH SECRETARIAT PAPER REFLECTS AS
CORRECTLY AND PRECISELY AS POSSIBLE VIEWS EXPRESSED DURING
MEETINGS.

6. EXCHANGE OF VIEWS ON SECRETARIAT TEXT: DISCUSSION
SHOWED GENERAL SATISFACTION WITH SECRETARIAT DRAFT AS
POSITIVE CONTRIBUTION TO GROUP'S WORK, STRIKING NEW GROUND,
EXPANDING ON EARLIER TEXT AND INCLUDING MORE EXPLICIT
NORMATIVE LANGUAGE. NEVERTHELESS, GROUP REGISTERED DIS-
SATISFACTION ON MANY OF POINTS MENTIONED EARLIER AND
SEVERAL OTHERS AS WELL, E.G., LACK OF REFERENCE TO
FAVORABLE INVESTMENT CLIMATE (ITALY); INSUFFICIENT EMPHASIS
ON CONSISTENCY OF TNC OPERATION WITH NATIONAL LAWS AND
POLICIES; OMISSION OF MENTION IN PREAMBLE OF CODE'S WORLD-
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WIDE APPLICATION (FRG).

7. EXCHANGE OF VIEWS ON PREAMBLE: PREAMBLE WAS ALSO
CONSIDERED ACCEPTABLE ALTHOUGH SOME RESERVATIONS WERE
EXPRESSED, E.G., REFERENCES TO NIEO DOCUMENT COULD NOT BE

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AID-05 CEA-01 CIAE-00 COME-00 EB-08 FRB-03 INR-10
NSAE-00 USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 SS-15 L-03 JUSE-00 FTC-01
HEW-04 CEQ-01 SEC-01 NSC-05 /141 W
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ACCEPTED BY COUNTRIES WHO HAD NOT SUBSCRIBED TO THOSE
TEXTS. IT WAS AGREED THAT OECD COUNTRIES NOT BE TOO

CRITICAL OF PREAMBULAR TEXT AND AWAIT COMMENTS FROM OTHER
DELEGATIONS. LEONARD

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Message Attributes

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